THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0557, Sherwood Forest Mobile Homes, Inc. v. James Reardon & a., the court on May 11, 2005, issued the following order:

The plaintiff operates a mobile home park in Exeter. The defendants bought a home in the park in 1985, and, with the permission of the park owner, equipped it with a beauty shop. In 1998, the plaintiff issued rules prohibiting commercial enterprises in the park. In 2001, the plaintiff filed a landlord and tenant writ requesting a writ of possession based upon the defendants' operation of their beauty shop in violation of park rules. The trial court ruled for the defendants, finding that they had been given permission in 1985 to operate the beauty parlor and that the plaintiff was not permitted by RSA 205-A:4, V to vary the terms of the defendants' original written and/or oral rental agreement without their express written consent. The plaintiff subsequently amended the park rules to impose a rental surcharge of $250 per month on commercial uses, and also to require that a commercial general liability insurance policy of at least $1 million, naming the plaintiff as an additional insured, be obtained. When the defendants refused to pay the rental surcharge, the plaintiff sought to evict them in January 2002 on the basis of non-payment of rent, but not on the basis that they violated the insurance requirement rule.

Following a hearing, the trial court ruled that the surcharge did not constitute rent and that it was "arbitrary, unreasonable and contrary to the spirit and intent of [RSA chapter 205-A]." The court also ruled that the plaintiff's eviction action was retaliatory and assessed a civil penalty of $500 and awarded attorney's fees to the defendants as a result of the plaintiff's bad faith conduct. On appeal, we noted, among other things, that the trial court had not made any findings on the factual issue of whether the rental increase was reasonable. We vacated the court's order and remanded for further proceedings consistent with our order.

On remand, the trial court denied the plaintiff's request for a further evidentiary hearing, stating that it saw no need for further evidence on the issue of reasonableness since evidence was offered in the trial on the merits. The court found no credible evidence to support the rental surcharge other than the plaintiff's claim that its liability insurance coverage would be increased as a result of the defendants' commercial operations. The court further found that the cost of insurance was $500

annually, and concluded that the rental surcharge, which totaled $3,000 annually, was unreasonable.

On appeal, the plaintiff first argues that the trial court unsustainably exercised its discretion by not holding a further evidentiary hearing. Cf. Thomas v. Finger, 141 N.H. 134, 137 (1996) (holding that decision whether to hold evidentiary hearing is within superior court's discretion). We disagree. Our remand order did not require a further evidentiary hearing, and the record supports the trial court's ruling that evidence on the issue of reasonableness was offered in the trial on the merits.

Next, the plaintiff contends that the court erred in determining that the rental surcharge was unreasonable because the court erroneously found that the plaintiff itself could have purchased the necessary insurance. The plaintiff contends that the evidence compels a finding that it could not obtain the insurance without the defendants' cooperation, and that the defendants refused to cooperate.

We need not determine whether the court erred in finding that the plaintiff could have purchased the insurance without the defendants' cooperation. Based upon the record and the findings that are not challenged on appeal, we conclude that the rental surcharge was objectively unreasonable as a matter of law. When the park rules were amended to impose the rental surcharge, they were also amended to require insurance – tenants undertaking a commercial use were required to obtain a commercial general liability insurance policy with minimum limits of $1 million that named the plaintiff as an additional insured. Given the trial court's finding that no credible evidence of damages or expenses supported the rental surcharge other than the cost of liability insurance coverage, it was objectively unreasonable to require the defendants both to purchase liability insurance naming the plaintiff as an additional insured and to pay a rental surcharge of $3,000 annually that the trial court found could be justified, albeit only in part, solely by the plaintiff's claim that its liability insurance coverage would be increased as a result of the defendants' commercial use.

Even assuming, as the plaintiff argues, that it was unable to purchase the required insurance without the cooperation of the

In Case No. 2004-0557, Sherwood Forest Mobile Homes, Inc. v. James Reardon & a., the court on May 11, 2005, issued the following order:

defendants, and that the defendants refused to cooperate, the result does not change. Imposition of the rental surcharge in the park rules remains objectively unreasonable – the rules require the defendants both to obtain insurance and to pay the surcharge. Thus, even under these assumptions, the trial court reached the right result. See In re Trailer and Plumbing Supplies, 133 N.H. 432, 438 (1990) (sustaining trial court decision that reached correct result on mistaken grounds).

Finally, the plaintiff argues that because it acted reasonably in enacting the rental surcharge, the trial court erred in finding retaliation. Because we conclude that imposition of the rental surcharge was not reasonable, we reject the premise of the plaintiff's argument.

The record on appeal indicates that the defendants filed a motion for award of attorney's fees with the trial court. The trial court declined to rule on the motion because this appeal was pending. Accordingly, we remand to the trial court to permit it to take such action as it may deem appropriate regarding that motion.

Affirmed and remanded.

Nadeau, Dalianis and Duggan, JJ., concurred.

Eileen Fox
Clerk